



# FAIRFAX COUNTY

# STAFF REPORT

V I R G I N I A

## PROPOSED ZONING ORDINANCE AMENDMENT

Certain Additions to an Existing Single Family Detached Dwelling When the Existing Dwelling Extends into a Minimum Required Yard by More than Fifty (50) Percent and/or is Closer Than Five (5) Feet to a Lot Line

## PUBLIC HEARING DATES

### Planning Commission

October 26, 2006 at 8:15 p.m.

### Board of Supervisors

November 20, 2006 at 5:00 p.m.

**PREPARED BY  
ZONING ADMINISTRATION DIVISION  
DEPARTMENT OF PLANNING AND ZONING  
703-324-1314**

September 25, 2006

DP



Americans With Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice. For additional information on ADA call 703-324-1334 or TTY 711 (Virginia Relay Center).

## STAFF COMMENT

### INTRODUCTION

The proposed amendment is on the 2006 Priority 1 Zoning Ordinance Amendment Work Program and is one of several changes requested by the Board of Supervisors to address certain reductions of yard requirements, increases in fence and wall height, reductions in lot width, and other issues. In the past, the most typical way a property owner could request a desired modification of specified yard requirements or an increase in fence or wall height was by a variance application submitted for review to and acted upon by the Board of Zoning Appeals (BZA). However, in accordance with Va. Code Ann. Section 15.2-2309 (2003) and as confirmed by the Supreme Court of Virginia in *Cochran v. Board of Zoning Appeals*, 267 Va. 756, 594 S.E. 2d 571 (2004), a variance may be granted only when the strict application of the Zoning Ordinance would, in the absence of a variance, “interfere with all reasonable beneficial uses of the property, taken as a whole.” *Cochran*, 267 Va. at 766, 594 S.E.2d at 577.

In light of this rigorous standard, the Board of Supervisors determined that it may be in the County’s best interest to allow some limited flexibility with regard to certain Zoning Ordinance provisions, such as minimum yard and fence/wall height requirements, and that these requests can be appropriately accommodated through the special permit or special exception review process. The proposed amendment is the fourth in a series of six potential Zoning Ordinance amendments that will be brought to the Board for consideration this year. This proposed amendment, however, addresses only the issue of establishing a special permit to allow for certain additions to an existing dwelling. When the series of recommended amendments was presented to the Board of Supervisors’ January 30, 2006 Development Process Committee, the issues addressed by this amendment were Item Number 3 on the list, entitled “Pop-ups/ Carport Enclosures”.

It is noted that previous discussions concerning flexibility included the desire to facilitate “pop-ups”, which involve the construction of a second story over an existing dwelling, and carport enclosures, which involve the addition of walls to an existing carport. This amendment deals with all building additions to a single family detached dwelling that involve an existing dwelling that is closer to the lot line than 50% of the required yard and/or is closer than 5 feet to a lot line, which is inclusive of both “pop-ups” and “carport enclosures”. No distinction is necessary for pop-ups and carport enclosures, as the Zoning Ordinance considers all such building additions in the same manner for the purpose of zoning regulations.

### BACKGROUND

On December 6, 2004, the Board of Supervisors authorized the Modification of Certain Minimum Required Yards; Waiver of Residential Minimum Lot Width Requirement and Increase in Fence and/or Wall Height Zoning Ordinance Amendment for public hearings. In response to citizen issues and questions, a public information session was held in January 2005, and the amendment was subsequently indefinitely deferred in order to allow more discussion between the citizens, staff, Planning Commission and BZA to address the outstanding issues. In

response, staff developed a list of 15 potential revisions to the Zoning Ordinance that could provide some flexibility in the application of certain provisions. After several discussions with the Board and members of the BZA, a series of six citizen meetings were held in the fall of 2005 at various locations throughout the County to obtain citizen input on the list of 15 potential amendments. Many of the comments from these citizen input meetings related to this amendment regarding the reduction of certain minimum yard requirements for additions to existing structures. Staff reported the results of the citizen meetings to the Board at its January 30, 2006 Development Process Committee and has been proceeding with work on the proposed amendments in a phased manner that was endorsed by the Board and then incorporated into the 2006 Zoning Ordinance Amendment Work Program. Thus far, the Board has adopted amendments regarding concurrent processing of certain applications (“process amendment”) and a reduction of certain yard requirements (“50% amendment”) and an amendment addressing fence height is currently pending. Information pertaining to scheduling and updates on the status of the future amendments is contained on the Department of Planning and Zoning website at [www.fairaxcounty.gov/dpz/projects/minyard.htm](http://www.fairaxcounty.gov/dpz/projects/minyard.htm). All public input concerning this proposed amendment has been taken into consideration by staff.

It is important to note the differences between this amendment and the two previously adopted amendments that relate to yard requirements. In the “Process Amendment”, if an applicant were seeking approval of a special exception or rezoning, the Board was granted the authority to approve yard requirements for existing structures and parking and to modify yard requirements for new parking areas and the peripheral parking lot landscape requirements as part of a special exception or rezoning for another use. Similarly, the BZA was granted the same authority to modify these yards as part of a request for a special permit for another use. This amendment has application predominantly to non-residential developments and the associated special permit is not one that would be used by the typical homeowner for an addition to his/her dwelling.

With the “50% Amendment”, however, the Board adopted provisions that will predominantly facilitate the typical homeowner additions to an existing dwelling, although it was not limited only to residential uses. This amendment would allow an applicant to seek a reduction of certain yard requirements by as much as 50%. Further, the resultant structure could not be closer than 5 feet to any lot line. With this amendment, any principal structure that was legally constructed at its present location could request this special permit for a yard reduction, provided; however, that if the existing principal structure was already located closer than 5 feet to a lot line or was already closer to the lot line than 50% of the yard requirement, they were not eligible to apply for this new special permit.

What the current amendment does is address that small group of single family detached dwellings that were not helped by the “50% Amendment” or the “Process Amendment”. The currently proposed amendment offers a special permit for any legally existing single family detached dwelling that is already located closer than 5 feet to a lot line or closer than 50% of the required yard (for example, if a house is located 8 feet from a lot line in a district that requires 20 feet). Staff believes this to be a small population, in that it would predominantly be applicable to single family detached dwellings built prior to the first Zoning Ordinance in 1941 and to certain single family detached dwellings built between 1941 and 1978 that were located in a district that had smaller yard requirements than the present requirements and/or allowed for greater

encroachments than are currently permitted.

## **CURRENT PROVISIONS AND PROPOSED AMENDMENT**

Under the current provisions of Par. 1 of Sect. 15-101 of the Zoning Ordinance, a building or use shall not be deemed a nonconforming use if it was conforming prior to the effective date of the Zoning Ordinance and would otherwise be conforming but for a failure to satisfy the minimum district or lot size or minimum yard requirements of the zoning district in which located. Such uses may be continued and enlarged, provided that such enlargement complies with all of the regulations of the zoning district in which located, except the lot size requirements. As such, an existing single family detached dwelling (SFD) that does not meet current yard requirements may be enlarged, but the addition must meet the regulations in effect at the time of the addition. This provision prevents additions that do not meet the current minimum yard requirements for the district in which located, such as a second story over the existing footprint of a dwelling or an addition that would continue along the line established by an existing dwelling when such existing dwelling does not meet the current minimum yard requirements.

With the adoption of Zoning Ordinance Amendment ZO 06-382 on July 10, 2006, an applicant may seek a special permit to establish an addition that is no closer than five feet to any lot line and which does not result in a reduction of the required minimum yards of more than 50%. This special permit is subject to approval by the BZA and to specific additional standards. However, there are SFDs existing in the County that are already closer than five feet to a lot line and/or are closer to the lot line than 50% of the minimum required yard (setback); therefore, they are not eligible to apply for a special permit under the new special permit category. The proximity of these dwellings to the lot line could be a function of the age of the dwelling, in that structures built before March 1941 (the effective date of the first Fairfax County Zoning Ordinance) were not subject to any setback requirements when constructed and structures built between March 1941 and August 1978 (the effective date of the current Zoning Ordinance) were subject to different zoning standards with regard to setbacks. Additionally, some yards may have been reduced by the acquisition of property for public uses, such as roadways. Currently, the only way one could construct an addition that is closer than 5 feet to a lot line and/or reduce a minimum required yard by more than 50% is through a variance. Given the rigorous standards established for the BZA to grant a variance, noted under the Introduction section of this report, approval of a variance for a building addition would likely present an insurmountable challenge for an applicant. The proposed amendment will create a special permit use to allow an addition to an existing lawfully constructed SFD that results in a yard that is less than 50% of the required yard and/or is closer than 5 feet to a lot line.

The amendment also adds some clarifying, informative changes to Articles 2 and 8. A new Sect. 2-422 is proposed to include an express statement that, notwithstanding any minimum yard requirement or locational criteria set forth in the Zoning Ordinance or any zoning approval associated with a rezoning, special permit, special exception or variance, no structure shall be allowed if such structure is precluded by any provision of the Fairfax County Code and/or any requirement of the Virginia Uniform Statewide Building Code (Building Code), including but not limited to any fire rating wall and limits on the percentage of wall openings. Staff believes this is important to remind applicants that zoning approval to reduce yards does not modify any

other applicable regulations. Of particular concern are the construction standards based on the distance a structure is from a lot line that have been established for fire safety reasons. For example, a carport under the Zoning Ordinance definition must not have any enclosure that is more than 18 inches in height, other than the minimum required support for its roof and the side(s) of the building to which the carport is contiguous. Under the Building Code, however, a structure with more than 25% of its side wall open may not come within 5 feet of a property line. Therefore, the BZA should not approve a special permit to allow a carport closer than 5 feet to a property line because a Building Permit would not be issued for the structure since the wall would be more than 25% open. Similarly, for a building addition to be located a distance between 3 and 5 feet from a lot line, the wall cannot have more than 25% of its surface as openings (doors, windows, etc.) and must be a one hour fire rated wall. With the requirement for architectural renderings of the proposed structure, staff will be better able to coordinate the proposed structure with certain regulations that are outside of the purview of the Zoning Ordinance to avoid a situation where the BZA approves a special permit, but no Building Permit can be issued for the structure or a structure is built that meets the Building Code but is in violation of the Zoning Ordinance. The following table sets forth the Building Code requirements with regard to distance from lot lines, openings and fire rated walls:

<b>Distance to Lot Line</b>	<b>Fire Rated Wall</b>	<b>Percentage of Openings</b>
5 feet and greater	Not Required	No Limit
3 feet up to 5 feet	1 hour	Maximum 25% of wall area
< 3 feet	1 hour	No Openings

The proposed amendment also clarifies an additional standard contained in Sect. 8-922 that was adopted for the special permit that allows the BZA to reduce a minimum required yard by up to 50%, but not closer than 5 feet to a lot line, for certain structures. Par. 4 of Sect. 8-922 sets forth an additional standard that limits the resulting gross floor area of an addition to 150% of the existing principal structure, in the same manner as Par. 4 of new Sect. 8-923 proposes. Staff proposes to clarify this paragraph to provide that the 150% limit applies to both additions built in compliance with the minimum yard requirements of the district in which located and to any addition that would be the subject of a subsequent special permit for construction within a required yard. This clarification is necessary to put applicants on notice that the size of the dwelling cannot be incrementally increased with each subsequent addition, regardless of whether such addition is in an area that meets the current minimum yard requirements or is in an area that requires a subsequent special permit for a yard reduction. It should also be noted that all development of a property subject to a yard reduction special permit must be in substantial conformance with that approval and any changes to the approved special permit are subject to the minor modification provisions of Par. 4 of Sect. 8-004. Under the minor modification provisions, very limited building additions may be administratively approved by the Zoning Administrator. However, such additions require written notice to be sent to all adjacent property owners. The resulting gross floor area of any subsequent addition continues to be limited to 150% of the gross floor area of the dwelling at the time of application for a special permit under this new category. Further, under the definition of “gross floor area” set forth in Article 20 of the Zoning Ordinance, parking structures are excluded from the calculation of gross floor area.

However, for the purposes of regulating the bulk of a single family residence on a lot, this amendment will set forth that an attached garage is included when determining the gross floor area of an existing single family dwelling and the resulting gross floor area of any addition to that dwelling. Par. 4 in Sections 8-922 and 8-923 will set forth this requirement for the purposes of determining the 150% limit on the size of an addition and the 50% limit on the maximum percentage of the structure that can be removed.

## **GENERAL AND ADDITIONAL STANDARDS**

All special permit requests are subject to the special permit general standards set forth in Sect. 8-006 of the Zoning Ordinance, which include standards relative to the use or structure being harmonious with the adopted comprehensive plan, satisfying the general purpose and intent of the applicable zoning district regulations, and being harmonious with and not adversely affecting the use or development of neighboring properties, among others. The proposed special permit for a reduction in yard requirements for certain additions to an existing SFD when the existing dwelling extends into a minimum required yard by more than 50% and/or is closer than 5 feet to a lot line will also be subject to the special permit general standards.

In addition to the general standards, this amendment includes a new Sect. 8-923 that includes the following additional standards for the proposed new special permit use:

- 1. Only the following yard requirements shall be subject to such special permit: (A) Minimum required yards, as specified in the residential districts in Article 3, provided such yards are not subject to proffered conditions or development conditions related to yards and/or such yards are not depicted on an approved special exception plat, special permit plat or variance plat or on a proffered generalized development plan; (B) Yard regulations for pipestem lots and lots contiguous to pipestem driveways set forth in Sect. 2-416 and (C) Regulations on permitted extensions into a minimum required yard as set forth in Sect. 2-412.***

This special permit is only available for additions to single family detached dwelling units located in conventional residential districts. The reduction in setback can apply to the minimum required yards specified for the district in which located, to the yards specified for pipestem lots and lots contiguous to a pipestem and to those extensions that are permitted for single family dwellings, such as a deck. This special permit would be applicable in all conventional residential districts; however, it would only be applicable to those properties where the yard in question is not specified to be a certain minimum distance by any previous proffered condition, special permit, special exception or variance approval

- 2. The applicant shall demonstrate that the existing single family detached dwelling complied with the minimum required yards in effect when the dwelling was constructed and that the yards have not been reduced to less than the yards required by this Ordinance since the effective date of this Ordinance, except by condemnation or by acquisition for public purposes by any governmental agency.***

Only those existing SFDs that were lawfully constructed prior to a request for an addition may be eligible to apply for this special permit. It is not the intent of this special permit to legitimize any dwelling that was not legally established. If it is determined that an existing dwelling was not legally constructed in terms of location, an applicant could apply for a special permit for an error in building location if the applicable standards can be met. If such error in building location special permit is approved, only then could the applicant request a special permit to add on to the SFD.

3. *When the existing single family detached dwelling and the proposed addition extend into a minimum required yard by a distance greater than fifty (50) percent of the minimum required yard and/or is closer than five (5) feet to a lot line, no portion of the proposed addition shall extend closer to the lot line associated with such yard than any portion of the existing dwelling. In addition, any eaves or other extensions associated with such building addition shall not extend beyond the point of the existing single family detached dwelling that is closest to the affected lot line.*

Additions to an existing SFD cannot result in a structure that is closer to the lot line than the existing SFD. The distance to the lot line is measured to the point of the structure closest to the lot line, including any eaves, and this distance may not be reduced. It should be noted that the Building Code has additional regulations governing structures in relationship to their distance from lot lines. Some additions may require modification to an existing dwelling in order to bring it into compliance with the applicable provisions of the Building Code. Additionally, as noted under the Current Provisions and Proposed Amendment section of this report, if an applicant requested special permit approval to construct a carport within 5 feet of a lot line, such approval could not be granted because a Building Permit could not be obtained because a carport, by Zoning Ordinance definition, has more than 25% of its side wall as openings. Nothing contained herein will override any requirement of the Building Code, particularly with regard to the construction of fire-rated walls and roofs and limits placed on the percentage of openings (doors, windows, etc.) that can be placed on any wall surface.

4. *The resulting gross floor area of an addition to an existing single family detached dwelling may be up to 150 percent of the total gross floor area of the dwelling that existed at the time of the first expansion request. The resulting gross floor area of any subsequent addition is limited to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion request, regardless of whether such addition complies with the minimum yard requirements or is the subject of a subsequent yard reduction special permit. If a portion of the single family detached dwelling is to be removed, no more than fifty (50) percent of the gross floor area of the existing dwelling at the time of the first yard reduction shall be removed. Notwithstanding the definition of gross floor area, as set forth in this Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage.*

This standard limits the size of the proposed addition to the dwelling and further limits how much of the original dwelling can be removed. There was considerable concern expressed at the public meetings about the replacement of smaller homes with homes that are much larger and out of character with the surrounding area. In an effort to preserve the existing character of neighborhoods, it was suggested that there be a limit on how much additional floor area can be constructed. Staff believes that 150% is a reasonable limit, as it would permit a second story addition over the existing footprint and/or it would allow for some limited expansion of the building footprint. It should be noted that, in many situations, the 150% limitation could be more restrictive than what could otherwise be permitted by right within the minimum required yards. For example, if a special permit were submitted for an existing dwelling of 1,000 square feet, the maximum gross floor area of the dwelling upon completion of the addition could not exceed 2,500 square feet, even though the buildable area of a lot could support additional square footage. As noted in earlier discussion, this provision expressly sets forth that the 150% limit on the increase in floor area for the dwelling applies to all subsequent additions, including those that are constructed in compliance with the minimum yard requirements of the district in which located and to any addition that would be the subject of a subsequent special permit for construction within a required yard.

This provision also precludes the complete tear-down and rebuild of a dwelling and clarifies how much of the existing dwelling must remain. It is believed that the proposed 50% removal maximum is appropriate in that it would allow for the removal of a significant portion of the older dwelling, but not the entire structure. It is staff's position that if more than half of the existing dwelling is to be removed, the resultant structure after the addition or reconstruction should comply with all of the requirements of the Zoning Ordinance in effect at the time of reconstruction. As noted previously, this provision also expressly sets forth that any floor area of an attached garage is included in the calculation of gross floor area for the dwelling.

5. ***The BZA shall determine that the proposed addition will be in character with the existing on-site development in terms of the location, height, bulk and scale of the existing structure(s) on the lot.***
6. ***The BZA shall determine that the proposed addition is harmonious with the surrounding off-site uses and structures in terms of location, height, bulk and scale of surrounding structures, topography, existing vegetation and the preservation of significant trees as determined by the Director.***

Standards 5 and 6 are designed to guide the BZA in determining the impacts of the proposed addition on an application property and on nearby properties. By identifying such factors as the height, bulk, scale and location of on-site and off-site structures and considering such factors as topography and vegetation, staff believes that the analysis of the proposal will encompass those factors that have the greatest potential for impact on nearby properties. Additionally, such factors as noise, light, erosion, and stormwater runoff are to be considered by the BZA when determining impacts. All of these issues are to be evaluated on a case-by-case basis based upon existing conditions and the specific proposal.



- 7. *No special permit shall be granted if the property is in violation of any provision of this Ordinance, including but not limited to the limit on the number of dwelling units per lot and/or the limits on the occupancy of any dwelling unit.***

This provision is in response to a Board request made at the time of authorization of this amendment and prohibits the granting of a special permit if zoning violations exist on the application site. This provision is specifically intended to, but is not limited to, address the issue of multiple occupancy of a dwelling unit and/or the establishment of more than one dwelling unit on a site. There is concern that the enlargement of a dwelling has been used in some cases to accommodate additional occupancy beyond that which is permitted by the Zoning Ordinance or to establish a second rental dwelling unit. It is staff's intent that a zoning inspection of all such special permit properties shall occur upon application to ascertain whether or not violations are present. It is further the intent of the Zoning Administration Division to coordinate with the Department of Public Works and Environmental Services to ensure that final inspections and/or inspections associated with the issuance of a Residential Use Permit give consideration to the occupancy limits and limits on the number of dwelling units per lot, as set forth in the Zoning Ordinance

- 8. *The BZA shall determine that the proposed addition shall not adversely impact the use and/or enjoyment of any adjacent property with regard to issues such as noise, light, air, safety, erosion and stormwater runoff.***

As with Standards 5 and 6, this standard is designed to guide the BZA in determining the impacts of the proposed addition on an application property and on nearby properties. Such factors as noise, light, erosion, and stormwater runoff are to be considered by the BZA when determining impacts. All of these issues are to be evaluated on a case-by-case basis based upon existing conditions and the specific proposal.

- 9. *The BZA may impose such conditions as it deems necessary, to include landscaping and screening, to minimize the impact of the addition on adjacent properties.***

This acknowledges the authority of the BZA to impose conditions that it deems necessary to ensure that the proposed addition is appropriate, and suggests possible consideration of conditions that the BZA may impose. Given that every property is unique, it may be appropriate in some situations and not in other situations for the BZA to impose such conditions.

- 10. *This standard sets forth specific plat and submission requirements for the new special permit.***

The current special permit plat submission requirements for most special permit applications are contained in Par. 2 of Sect. 8-011 of the Zoning Ordinance. With regard to submission requirements for the new special permit for certain additions to a SFD, staff is recommending special permit plat submission requirements that are similar to the plat detail currently required for a special permit for an error in building location and for

the special permit for a reduction in yards of not more than 50%, which are somewhat less restrictive than those enunciated in Par. 2 of Sect. 8-011. Staff believes that an appropriate amount of information must be provided in order to evaluate these new special permit uses. However, staff believes that all of the information required by Sect. 8-011 is not necessarily required to adequately review this new special permit use and could be financially prohibitive for individual property owners. Some of the special permit plat submission requirements in Sect. 8-011 that are proposed to be excluded with these new special permit uses include: detailed right-of-way delineations, stormwater management information, topographic information, limits of clearing and grading and existing vegetation maps. Staff believes the proposed submission standards to be appropriate from a reviewer's perspective and give due consideration to the expense of preparation of a certified plat. In those cases where the applicant is requesting relief from the required yards based on issues such as steep slopes or the presence of significant trees that warrant preservation, it is staff's position that such additional information can be obtained from existing records and/or provided as an additional part of the justification submitted by the applicant with the submission. Staff does not believe that this information will be necessary in all special permit cases.

***11. Architectural depictions of the proposed addition as viewed from all lot lines and street lines to include building materials, roof type, window treatment and any associated landscaping and/or screening shall be provided.***

This standard requires the submission of architectural depictions of the proposed addition as viewed from all lot lines and street lines, including an indication of the building materials, roof type, window treatments and any associated landscaping and/or screening that is to be provided. It is staff's position that this information will assist staff, the BZA and concerned citizens to better understand how the addition will appear on the lot and what impacts the addition may have on nearby properties. The architectural depictions do not have to be prepared and sealed by a professional, but rather can be prepared or acquired by the applicant in order to minimize the costs to the applicant.

## **APPLICATION FEES**

Given that the proposed amendment adds a new special permit use, adjustments to the application fee schedule in Par. 1 of Sect. 18-106 of the Zoning Ordinance are required. The following new fee is proposed:

- Special permit for certain additions to an existing single family detached dwelling when the existing dwelling extends into a minimum required yard by more than fifty (50) percent and/or is closer than five (5) feet to a lot line - \$295.

The current variance application fee for residential minimum yard variance is \$295 and for all other yard variances is \$2,645. This would have included a variance for an addition to an existing dwelling that was already located more than 50% closer to the lot line than permitted and/or is located within five feet of a lot line. The proposed application fee for the new special

permit is consistent with the current variance application fees and with the fee established for a special permit to permit a reduction of certain yard requirements for additions to existing structures.

## **PROCESS**

There are currently pending variance requests for additions that are more than 50% closer to the lot line than otherwise permitted. Staff is proposing to administratively convert these applications, at the applicant's specific request, from a variance application to a special permit application. Each applicant would be required to complete new application forms, revise their statement of justification, and submit a new affidavit and architectural rendering for the special permit. With regard to the plats, the existing variance plat may be deemed to be sufficient for the special permit plat and any additional plat requirements could be waived by the Director of the Zoning Evaluation Division. Staff anticipates the scheduling of the public hearings for these special permits to begin soon after the effective date of the amendment and anticipates that these current variance applications, some of which were submitted over two years ago, would be the first applications to be processed under the new special permit.

## **CONCLUSION**

Staff believes that the recommended changes will accomplish the Board's desire to accommodate some of the typical variance requests as special permit applications. Staff further believes the proposed amendment provides the flexibility to address site-specific circumstances that may warrant relief from the specified minimum yard requirements while still providing adequate protection to adjacent properties that may be adversely impacted by such yard reductions. Therefore, staff recommends approval of the proposed amendment with an effective date of 12:01 a.m. on the day following adoption.

## PROPOSED AMENDMENT

*This proposed Zoning Ordinance amendment is based on the Zoning Ordinance in effect as of September 25, 2006, and there may be other proposed amendments which may affect some of the numbering, order or text arrangement of the paragraphs or sections set forth in this amendment, which other amendments may be adopted prior to action on this amendment. In such event, any necessary renumbering or editorial revisions caused by the adoption of any Zoning Ordinance amendments by the Board of Supervisors prior to the date of adoption of this amendment will be administratively incorporated by the Clerk in the printed version of this amendment following Board adoption.*

*The amendment presents up to four (4) options for certain portions of the proposed text due to other pending Zoning Ordinance amendments. The Archaeological Survey Submission Requirements and the Fence and/or Wall Height amendments are pending Board of Supervisors' action at the time of authorization of this amendment; therefore, this amendment presents options as follows:*

*Option 1 - Reflects the Zoning Ordinance in effect at the time of authorization of this Staff Report.*

*Option 2 - Reflects the text of the amendment that would be applicable if only the Archaeological Survey Submission Requirements amendment is adopted by the Board of Supervisors prior to adoption of this amendment.*

*Option 3 - Reflects the text of the amendment that would be applicable if only the Fence and/or Wall Height amendment is adopted by the Board of Supervisors prior to adoption of this amendment.*

*Option 4 - Reflects the text of the amendment that would be applicable if both the Archaeological Survey Submission Requirements and Fence and/or Wall Height amendments are adopted by the Board of Supervisors prior to adoption of this amendment.*

1 **Amend Article 2, General Regulations, Part 4, Qualifying Lot and Yard**  
 2 **Regulations, by adding a new Sect. 2-422, Compliance with Other Applicable**  
 3 **Regulations and Standards, to read as follows:**

4  
 5 **2-422 Compliance with Other Applicable Regulations and Standards**

6  
 7 Notwithstanding any minimum yard requirements or locational criteria contained  
 8 in this Ordinance or any zoning approval associated with a rezoning, special  
 9 permit, special exception or variance, no structure shall be allowed if such  
 10 structure is precluded by any provision of The Code and/or subject to any  
 11 applicable requirements of the Virginia Uniform Statewide Building Code that  
 12 conflict with the zoning approval, including but not limited to, any fire rating wall  
 13 and limits on the percentage of wall openings.

14  
 15 **Amend Article 8, Special Permits, as follows:**

- 16  
 17 - **Amend Part 0, General Provisions, Sect. 8-011, Submission Requirements, by**  
 18 **revising the lead-in paragraph to read as follows:**

19  
 20 **OPTION 1**

21  
 22 All applications for special permit uses, except for temporary special permits, shall  
 23 be accompanied by the following items, except that additional or modified  
 24 submission requirements are set forth in Part 1 for all Extraction and Excavation  
 25 Uses, in Part 3 for Home Child Care Facilities, in Part 4 for certain Community  
 26 Uses, in Parts 5 and 6 for certain Commercial Recreation and Outdoor Recreation  
 27 Uses and in Part 9 for Approval of Modifications to Minimum Yard Requirements  
 28 for Certain R-C Lots, Approval of Reduction in Minimum Yard Requirements Based  
 29 on Error in Building Location, Reduction of Certain Yard Requirements, Certain  
 30 Additions to an Existing Single Family Detached Dwelling When the Existing  
 31 Dwelling Extends into a Minimum Required Yard by More Than Fifty (50) Percent  
 32 and/or is Closer Than Five (5) Feet to a Lot Line and Modification to the Limitations  
 33 on the Keeping of Animals. Upon receipt of a written request with justification, the  
 34 Zoning Administrator may modify or waive a submission requirement of Par. 2  
 35 below, if it is determined that the requirement is clearly not necessary for the review  
 36 of the application.

37  
 38 **OR**

39  
 40 **OPTION 2 – (Change in bold italics)**

41  
 42 All applications for special permit uses, except for temporary special permits, shall  
 43 be accompanied by the following items, except that additional or modified  
 44 submission requirements are set forth in Part 1 for all Extraction and Excavation  
 45 Uses, in Part 3 for Home Child Care Facilities, in Part 4 for certain Community  
 46 Uses, in Parts 5 and 6 for certain Commercial Recreation and Outdoor Recreation

Uses and in Part 9 for Approval of Modifications to Minimum Yard Requirements for Certain R-C Lots, Approval of Reduction in Minimum Yard Requirements Based on Error in Building Location, Reduction of Certain Yard Requirements, Certain Additions to an Existing Single Family Detached Dwelling When the Existing Dwelling Extends into a Minimum Required Yard by More Than Fifty (50) Percent and/or is Closer Than Five (5) Feet to a Lot Line and Modification to the Limitations on the Keeping of Animals. Upon receipt of a written request with justification, the Zoning Administrator may modify or waive a submission requirement of Par. 2 below *or the archaeological submission requirement of Par. 8 below*, if it is determined that the requirement is clearly not necessary for the review of the application.

OR

**OPTION 3 – (Change in bold italics)**

All applications for special permit uses, except for temporary special permits, shall be accompanied by the following items, except that additional or modified submission requirements are set forth in Part 1 for all Extraction and Excavation Uses, in Part 3 for Home Child Care Facilities, in Part 4 for certain Community Uses, in Parts 5 and 6 for certain Commercial Recreation and Outdoor Recreation Uses and in Part 9 for Approval of Modifications to Minimum Yard Requirements for Certain R-C Lots, Approval of Reduction in Minimum Yard Requirements Based on Error in Building Location, Reduction of Certain Yard Requirements, ***Increase in Fence and/or Wall Height in Any Front Yard***, Certain Additions to an Existing Single Family Detached Dwelling When the Existing Dwelling Extends into a Minimum Required Yard by More Than Fifty (50) Percent and/or is Closer Than Five (5) Feet to a Lot Line and Modification to the Limitations on the Keeping of Animals. Upon receipt of a written request with justification, the Zoning Administrator may modify or waive a submission requirement of Par. 2 below, if it is determined that the requirement is clearly not necessary for the review of the application.

OR

**OPTION 4 – (Change in bold italics)**

All applications for special permit uses, except for temporary special permits, shall be accompanied by the following items, except that additional or modified submission requirements are set forth in Part 1 for all Extraction and Excavation Uses, in Part 3 for Home Child Care Facilities, in Part 4 for certain Community Uses, in Parts 5 and 6 for certain Commercial Recreation and Outdoor Recreation Uses and in Part 9 for Approval of Modifications to Minimum Yard Requirements for Certain R-C Lots, Approval of Reduction in Minimum Yard Requirements Based on Error in Building Location, Reduction of Certain Yard Requirements, ***Increase in Fence and/or Wall Height in Any Front Yard***, Certain Additions to an Existing

Single Family Detached Dwelling When the Existing Dwelling Extends into a Minimum Required Yard by More Than Fifty (50) Percent and/or is Closer Than Five (5) Feet to a Lot Line and Modification to the Limitations on the Keeping of Animals. Upon receipt of a written request with justification, the Zoning Administrator may modify or waive a submission requirement of Par. 2 below *or the archaeological submission requirement of Par. 8 below*, if it is determined that the requirement is clearly not necessary for the review of the application.

- Amend Part 9, Group 9 Uses Requiring Special Regulation, as follows:

#### OPTIONS 1 and 2

- Amend Sect. 8-901, Group 9 Special Permit Uses, by adding a new Par. 22 to read as follows:

22. Certain Additions to an Existing Single Family Detached Dwelling When the Existing Dwelling Extends into a Minimum Required Yard by More Than Fifty (50) Percent and/or is Closer Than Five (5) Feet to a Lot Line.

#### OPTIONS 3 and 4 – (change in bold italics)

- Amend Sect. 8-901, Group 9 Special Permit Uses, by adding a new Par. 23 to read as follows:

***22. Increase in fence and/or wall height in any front yard.***

23. Certain Additions to an Existing Single Family Detached Dwelling When the Existing Dwelling Extends into a Minimum Required Yard by More Than Fifty (50) Percent and/or is Closer Than Five (5) Feet to a Lot Line.

- Amend Sect. 8-922, Provisions for Reduction of Certain Yard Requirements, by revising Par. 4 to read as follows:

The BZA may approve a special permit to allow a reduction of certain yard requirements subject to all of the following:

4. The resulting gross floor area of an addition to an existing principal structure may be up to 150 percent of the total gross floor area of the principal structure that existed at the time of the first expansion request. The resulting gross floor area of any subsequent addition is limited to 150 percent of the gross floor area of the dwelling that existed at the time of the first expansion request, regardless of whether such addition complies with the minimum yard requirements or is the subject of a subsequent yard reduction special permit. ~~In such instance,~~ If a portion

of ~~the~~ a single family detached dwelling is to be removed, no more than fifty (50) percent of the gross floor area of the existing dwelling at the time of the first yard reduction shall be removed. Notwithstanding the definition of gross floor area, as set forth in this Ordinance, the gross floor area of a single family dwelling for the purpose of this paragraph shall be deemed to include the floor area of any attached garage.

#### OPTIONS 1 and 2

- **Add a new Sect. 8-923, Certain Additions to an Existing Single Family Detached Dwelling When the Existing Dwelling Extends into a Minimum Required Yard by More Than Fifty (50) Percent and/or is Closer Than Five (5) Feet to a Lot Line, to read as follows:**

**8-923 Certain Additions to an Existing Single Family Detached Dwelling When the Existing Dwelling Extends into a Minimum Required Yard by More Than Fifty (50) Percent and/or is Closer Than Five (5) Feet to a Lot Line**

The BZA may approve certain additions to an existing single family detached dwelling when the existing dwelling extends into a minimum required yard by more than fifty (50) percent and/or is closer than five (5) feet to a lot line, but only in accordance with the following:

1. Only the following yard requirements shall be subject to such special permit:
  - A. Minimum required yards, as specified in the residential in Article 3, provided such yards are not subject to proffered conditions or development conditions related to yards and/or such yards are not depicted on an approved special exception plat, special permit plat or variance plat or on a proffered generalized development plan.
  - B. Yard regulations for pipestem lots and lots contiguous to pipestem driveways set forth in Sect. 2-416.
  - C. Regulations on permitted extensions into a minimum required yard as set forth in Sect. 2-412.
2. The applicant shall demonstrate that the existing single family detached dwelling complied with the minimum required yards in effect when the dwelling was constructed and that the yards have not been reduced to less than the yards required by this Ordinance since the effective date of this Ordinance, except by



1                   condemnation or by acquisition for public purposes by any  
2                   governmental agency.

3  
4                   3. When the existing single family detached dwelling and the  
5                   proposed addition extend into a minimum required yard by a  
6                   distance greater than fifty (50) percent of the minimum required  
7                   yard and/or is closer than five (5) feet to a lot line, no portion of  
8                   the proposed addition shall extend closer to the lot line  
9                   associated with such yard than any portion of the existing  
10                  dwelling. In addition, any eaves or other extensions associated  
11                  with such building addition shall not extend beyond the point of  
12                  the existing single family detached dwelling that is closest to the  
13                  affected lot line.

14  
15                  4. The resulting gross floor area of an addition to an existing single  
16                  family detached dwelling may be up to 150 percent of the total  
17                  gross floor area of the dwelling that existed at the time of the first  
18                  expansion request. The resulting gross floor area of any  
19                  subsequent addition is limited to 150 percent of the gross floor  
20                  area of the dwelling that existed at the time of the first expansion  
21                  request, regardless of whether such addition complies with the  
22                  minimum yard requirements or is the subject of a subsequent  
23                  yard reduction special permit. If a portion of the single family  
24                  detached dwelling is to be removed, no more than fifty (50)  
25                  percent of the gross floor area of the existing dwelling at the time  
26                  of the first yard reduction shall be removed. Notwithstanding the  
27                  definition of gross floor area, as set forth in this Ordinance, the  
28                  gross floor area of a single family dwelling for the purpose of  
29                  this paragraph shall be deemed to include the floor area of any  
30                  attached garage.

31  
32                  5. The BZA shall determine that the proposed addition will be in  
33                  character with the existing on-site development in terms of the  
34                  location, height, bulk and scale of the existing structure(s) on the  
35                  lot.

36  
37                  6. The BZA shall determine that the proposed addition is  
38                  harmonious with the surrounding off-site uses and structures in  
39                  terms of location, height, bulk and scale of surrounding  
40                  structures, topography, existing vegetation and the preservation  
41                  of significant trees as determined by the Director.

42  
43                  7. No special permit shall be granted if the property is in violation  
44                  of any provision of this Ordinance, including but not limited to  
45                  the limit on the number of dwelling units per lot and/or the limits  
46                  on the occupancy of any dwelling unit.

8. The BZA shall determine that the proposed addition shall not adversely impact the use and/or enjoyment of any adjacent property with regard to issues such as noise, light, air, safety, erosion and stormwater runoff.
9. The BZA may impose such conditions as it deems necessary, to include landscaping and screening, to minimize the impact of the addition on adjacent properties.
10. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by fifteen (15) copies of a plat and such plat shall be presented on a sheet having a maximum size of 24" x 36", and one 8 1/2" x 11" reduction of the plat. Such plat shall be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat shall be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia. Such plat shall contain the following information:
  - A. Boundaries of entire property, with bearings and distances of the perimeter property lines, and of each zoning district.
  - B. Total area of the property and of each zoning district in square feet or acres.
  - C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.
  - D. The location, dimension and height of any existing building or structure and of the proposed addition. In addition, for decks, the height of the finished floor above finished ground level.
  - E. All required minimum yards to include front, side and rear, a graphic depiction of the angle of bulk plane, if applicable, and the distances from all existing and the proposed addition to lot lines.
  - F. Means of ingress and egress to the property from a public street(s).
  - G. If applicable, the location of a well and/or septic field.

H. Location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.

I. The location, type and height of any existing and proposed landscaping and screening.

J. Approximate delineation of any floodplain designated by the Federal Insurance Administration, United States Geological Survey, or Fairfax County, the delineation of any Resource Protection Area and Resource Management Area, and the approximate delineation of any environmental quality corridor as defined in the adopted comprehensive plan, and, if applicable, the distance of any existing and proposed structures from the floodplain, Resource Protection Area and Resource Management Area, or environmental quality corridor.

K. Seal and signature of professional person certifying the plat.

11. Architectural depictions of the proposed addition as viewed from all lot lines and street lines to include building materials, roof type, window treatment and any associated landscaping and/or screening shall be provided.

**OPTIONS 3 and 4 – Add a new Sect. 8-924, Certain Additions to an Existing Single Family Detached Dwelling When the Existing Dwelling Extends into a Minimum Required Yard by More Than Fifty (50) Percent and/or is Closer Than Five (5) Feet to a Lot Line, that is identical to what is set forth in OPTIONS 1 and 2, above.**

**Amend Article 18, Administration, Amendments, Violations and Penalties, Part 1, Administration, Sect. 18-106, Application and Zoning Compliance Letter Fees, by revising the Group 9 entry in Par. 1 to read as follows:**

**OPTIONS 1 and 2**

All appeals and applications as provided for in this Ordinance and requests for zoning compliance letters shall be accompanied by a filing fee in the amount to be determined by the following paragraphs unless otherwise waived by the Board for good cause shown; except that no fee shall be required where the applicant is the County of Fairfax or any agency, authority, commission or other body specifically created by the County, State or Federal Government. All fees shall be made payable to the County of Fairfax. Receipts therefore shall be

issued in duplicate, one (1) copy of which receipt shall be maintained on file with the Department of Planning and Zoning.

1. Application for a variance, appeal, special permit or special exception:  
Group 9 special permit

Open air produce stand	\$ 585
Accessory dwelling unit	\$ 140
Modification to minimum yard requirements for R-C lots	\$ 60
Modification to the limitations on the keeping of animals; error in building location; reduction of certain yard requirements on a single family dwelling lot; modification of minimum yard requirements for certain existing structures and uses; <u>certain additions to an existing single family detached dwelling when the existing dwelling extends into a minimum required yard by more than fifty (50) percent and/or is closer than five (5) feet to a lot line</u> ; noise barriers on a single residential lot	\$ 295
Reduction of certain yard requirements on all other uses	\$ 2645
All other uses	\$ 5295
Amendment to a previously approved and currently valid special permit or special exception for a reduction of certain yard requirements	\$ 295
Amendment to a previously approved and currently valid special permit or special exception for a reduction of certain yard requirements on all other uses	\$ 2645

OR

**OPTIONS 3 and 4 (changes in bold italics)**

All appeals and applications as provided for in this Ordinance and requests for zoning compliance letters shall be accompanied by a filing fee in the amount to be determined by the following paragraphs unless otherwise waived by the Board for good cause shown; except that no fee shall be required where the applicant is the County of Fairfax or any agency, authority, commission or other body specifically created by the County, State or Federal Government. All fees shall be made payable to the County of Fairfax. Receipts therefore shall be

issued in duplicate, one (1) copy of which receipt shall be maintained on file with the Department of Planning and Zoning.

1. Application for a variance, appeal, special permit or special exception:

Group 9 special permit

Open air produce stand \$ 585

Accessory dwelling unit \$ 140

Modification to minimum yard requirements for R-C lots \$ 60

Modification to the limitations on the keeping of animals; \$ 295

error in building location; reduction of certain yard

requirements on a single family dwelling lot;

modification of minimum yard requirements for certain

existing structures and uses; certain additions to an

existing single family detached dwelling when the existing

dwelling extends into a minimum required yard by more

than fifty (50) percent and/or is closer than five (5) feet to

a lot line; noise barriers on a single residential lot;

***increase in fence and/or wall height in any front yard on***

***a single family dwelling lot***

Reduction of certain yard requirements on all other uses; \$ 2645

***increase in fence and/or wall height in any front yard on***

***all other uses***

All other uses \$ 5295

Amendment to a previously approved and currently valid special permit \$ 295

or special exception for a reduction of certain yard requirements ***or an***

***increase in fence and/or wall height in any front yard on a single family***

***lot***

Amendment to a previously approved and currently valid special permit \$ 2645

or special exception for a reduction of certain yard requirements ***or an***

***increase in fence and/or wall height in any front yard*** on all other uses